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October 17, 2021

Honorable Jil Mazer-Marino
U.S. Bankruptcy Court, E.D.N.Y.
Conrad B. Duberstein Courthouse
271 Cadman Plaza East
Brooklyn, NY 11201-1800

Re: Desoto Owners LLC (the “Debtor”) 20-43387 (JMM)
Proposed Sale Order

Dear Judge Mazer-Marino:

I am uploading an order upon which all parties agree save for the following phrase in the recital paragraphs:

“The Debtor contends the assignment of the Hudson’s Lease effectuated by this Order does not cut off the rights of the Debtor or a chapter 7 trustee to argue that Hudson’s remains liable to the Debtor’s estate for back percentage sales rent”.

The Debtor advised me this afternoon that, pre-petition, Hudson’s under-reported percentage sales rent and subsequently paid a substantial amount to rectify that under-reporting. It believes that, based on information available from Hudson’s website, Hudson’s continued to underreport percentage rent and that substantial six figure amounts are potentially due from Hudson’s. The Debtor advised me today that in signing off on the section 365 motion which was part of the sale motion, it did not intend to waive that claim. The Debtor understands those monies would be part of Romspen’s cash collateral but should nevertheless be collected.

Hudson’s and Romspen have requested a conference as to this matter. I have a hearing in the morning at 10:30, but am otherwise available tomorrow.

Under threat of sanctions made by opposing counsel, I have consulted a Florida lawyer who advised me he believes there is no clear law on whether an assignment of a lease would assign the rights of the lessor under these circumstances. The motion itself is also silent on this point. Accordingly, I believe it is a proper position to advocate especially since Romspen is in no way harmed by inclusion of this phrase and any controversy is resolvable before the anticipated closing on Wednesday.

Sincerely,

s/Isaac Nutovic
Isaac Nutovic